

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESERVATION OF RIGHTS OF THE PUERTO RICO FISCAL AGENCY
AND FINANCIAL ADVISORY AUTHORITY REGARDING THE FOURTH
AMENDED TITLE III JOINT PLAN OF ADJUSTMENT OF
THE COMMONWEALTH OF PUERTO RICO, *ET AL.***

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the elected Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Judge Laura Taylor Swain:

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), acting pursuant to the authority granted to it under the *Puerto Rico Fiscal Agency and Financial Advisory Authority Act*, Act 2-2017, respectfully submits this reservation of rights (the “Reservation of Rights”) regarding the *Fourth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico* (ECF No. 17191) (the “Amended Plan”).² In support of this Reservation of Rights, AAFAF respectfully states as follows:

RESERVATION OF RIGHTS

1. On June, 29, 2021, the Oversight Board filed the Amended Plan, which disclosed for the first time critical information regarding how the Oversight Board intends to attempt to implement the Plan without legislation. Specifically, the Oversight Board modified the Plan to include as a condition precedent to the Effective Date that the Confirmation Order:

- Provide that neither the Governor nor the Legislature shall enact, adopt, or implement any law, rule, regulation, or policy that impedes, financially or otherwise, consummation and implementation of the transactions contemplated by the Plan; and
- Provide that the Governor and the Legislature, individually and jointly, as appropriate, shall take any and all actions necessary to consummate the transactions contemplated by the Plan.

2. Based on these modifications, it appears that the Oversight Board intends to rely on an unprecedented theory of preemption whereby PROMESA not only preempts and overrides Puerto Rico law, but can be used to compel the Government to legislate against its will. AAFAF is not aware of any case where a federal court, sitting in bankruptcy or territorial power jurisdiction, has successfully compelled a state or local legislature to legislate. Moreover, by depriving elected officials from exercising the political power vested in them by 2.4 million Americans, the Board’s

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Plan.

proposed course of action would disenfranchise Puerto Rico of the most basic of democratic principles; something only seen in more authoritarian countries.

3. The latest action of the Board also clearly aims to upend the careful balance of powers Congress sought to achieve in enacting PROMESA. By providing that Title III of PROMESA “does not limit or impair” Puerto Rico’s “political or governmental powers” to “control, by legislation or otherwise, the territory or any territorial instrumentality thereof,” Congress recognized that provisions of the Bankruptcy Code incorporated into PROMESA cannot be invoked to impair governmental powers without government consent. *See* PROMESA § 303. The Board’s position that it can compel the elected-Governor and elected-Legislature, by federal court order, to legislate and take all actions necessary to implement the Plan undermines the structure of PROMESA and ignores the rights expressly reserved to the Government.

4. For these reasons, AAFAF reserves all rights to raise this critical issue at the Disclosure Statement hearing or at any time at or before confirmation. AAFAF further reserves the right to take discovery, to admit evidence, and to set forth in additional detail the bases and nature of its objections to the Amended Plan. The filing of this Reservation of Rights shall not constitute a waiver of AAFAF’s exercise of any such rights.

Dated: June 30, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ John J. Rapisardi

John J. Rapisardi
Maria J. DiConza
Matthew Kremer
(Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, New York 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

-and-

Peter Friedman
(Admitted *Pro Hac Vice*)
1625 Eye Street, NW
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

*Attorneys for the Puerto Rico Fiscal Agency
and Financial Advisory Authority*

/s/ Luis C. Marini-Biaggi

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com

Carolina Velaz-Rivero
USDC No. 300913
E:mail: cvelaz@mpmlawpr.com

MARINI PIETRANTONI MUÑIZ LLC

250 Ponce de León Ave.
Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2171
Fax: (787) 936-7494

*Attorneys for the Puerto Rico Fiscal Agency
and Financial Advisory Authority*